

Appeal from a decision of the California State Office, Bureau of Land Management, segregating and suspending a part of noncompetitive oil and gas lease offer CA 20001, redesignated CA 20918.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:
Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases

Filing a noncompetitive oil and gas lease offer creates no right in the offeror to lease issuance on terms available at the time the lease offer was made. The Secretary may suspend a portion of a lease offer pending additional KGS study.

APPEARANCES: Ervin R. Wepplo, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Ervin R. Wepplo has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated December 2, 1987, that segregated and suspended part of his noncompetitive oil and gas lease offer. Appellant's application numbered CA 20001 was the first selected for Parcel CA 140, in the March 26, 1987, drawing. This parcel consisted of two separate tracts totalling 102.07 acres: the NE¹/₄ sec. 26, and lots 3 and 4 sec. 31, T. 21 S., R. 15 E., Mount Diablo Meridian, Fresno County, California. Appellant filed a completed offer for CA 20001, totalling 102.07 acres on September 14, 1987.

On November 4, 1987, the Bakersfield District Office, BLM, informed the California State Office, BLM, that part of the land in lease offer CA 20001 was in the Northern San Joaquin KGS (known geological structure) study area. Lots 3 and 4 in sec. 31 were approved for lease to appellant. Approval of the remainder of the lease offer, comprising the NE¹/₄ sec. 26, was suspended pending completion of the KGS study. The result was that appellant's offer was accepted only as to lands in sec. 31. BLM therefore executed segregated lease CA 20001, effective January 1, 1988, for 62.07 acres comprising lots 3 and 4, sec. 31. The remainder of appellant's offer was suspended pending additional geological review, and redesignated CA 20918.

In his statement of reasons (SOR) for appeal to this Board, appellant asserts that:

According to the Simultaneous Oil and Gas Parcel List Disclaimer, "this preparatory work, which may include checking status, coordinating with the surface managing agency, clearlisting for availability for noncompetitive leasing, review and attachment of leasing terms and conditions and other items, will be performed subsequent to the selection process." Thus, I assumed the lease was clear with no liens or other attachments.

I received a new lease from the Bureau of Land Management dated December 2, 1987. The serial number was changed from CA 20001 to CA 20918. The acreage had been changed from 102.07 acres to 40 acres. I signed all three copies of the new lease under protest as failure to comply within the time provided would result in the rejection of application CA 20918.

The decision is adverse to me as I bought and paid for 102.07 acres with a clear title.

[1] By filing his offer to lease CA 20001, appellant acquired no property interest. An application for an oil and gas lease is more accurately characterized as a hope or expectancy rather than a vested property right. Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1969); Altex Oil Corp., 73 IBLA 73 (1983). As the court explained in McDade v. Morton, 353 F. Supp. 1006, 1010 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974), "the courts have consistently held that no right to receive an oil and gas lease is obtained by the filing of a lease offer, even though the offeror be the 'first qualified applicant.'" That the Secretary of the Interior has discretion to accept or reject a lease offer means that the Secretary may delay his decision, and that delay will not preclude a final adverse disposition of that issue. Eugen Dumitru Georgescu, 109 IBLA 317 (1989).
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The Secretary lacks authority to issue a noncompetitive lease to lands within a KGS. 2/ 43 CFR 3112.5-2(b) (1988); McDonald v. Clark, 771 F.2d 460 (10th Cir. 1985); McDade v. Morton, *supra*; Frederick W. Lowey, 76 IBLA 195 (1983). If, at any time prior to issuance of a lease to a noncompetitive offeror, it is determined that land sought to be leased is within a KGS, a noncompetitive offer for that land must be rejected. Eugen Dumitru Georgescu, *supra*.

1/ The listing notice, quoted by appellant in his SOR, stated that preparatory work, including "clearlisting for availability for noncompetitive leasing" would be performed "subsequent to the selection process."

2/ The Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100- 203, 101 Stat. 1330-259 (Dec. 22, 1987), repealed the KGS provision codified at 30 U.S.C. § 226 (1982), which the Department's KGS regulations had implemented. However, pending offers remained subject to provisions of the prior law.

When BLM segregated lease CA 20001, no final KGS determination had been made concerning the 40-acre tract in sec. 26. Therefore, BLM has not yet determined whether to accept appellant's offer to lease the tract designated CA 20918. If it is decided that the lease should issue, following KGS review, it must issue to appellant, who is the first-qualified applicant. 30 U.S.C. § 226(c) (1982); Beard Oil Co., 105 IBLA 285 (1988). If the offer is rejected, then appellant will have the right to appeal that decision pursuant to 43 CFR 4.410(a). In such event, appellant would have the burden of showing by a preponderance of the evidence that the determination to reject his offer was made in error. Bender v. Clark, 744 F.2d 1424 (10th Cir. 1984); Jack J. Grynberg, 106 IBLA 367 (1989).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge